STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 15, 2014
v	No. 313933 Wayne Circuit Court
ERIC-JAMAR BOBBY THOMAS, Defendant-Appellant.	LC No. 12-005271-FC

Before: SERVITTO, P.J., and FORT HOOD and BECKERING, JJ.

PER CURIAM.

Defendant, Eric-Jamar Bobby Thomas, appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, possession with intent to deliver ecstasy, MCL 333.7401(2)(b)(i), larceny from a person, MCL 750.357, and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). The trial court sentenced defendant to 30 to 45 years' imprisonment for second-degree murder, 4 to 20 years' imprisonment for possession with intent to deliver ecstasy, four to ten years' imprisonment for larceny from a person, and two to four years' imprisonment for possession with intent to deliver marijuana. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This criminal action arose from the fatal shooting of Anthony Edwards outside of a home located in the city of Detroit. The prosecution presented evidence at trial to establish that during the early morning hours of March 2, 2012, Edwards and Earl Holt went to defendant's home to purchase marijuana. Defendant was not at home initially, and Javon Woodson let Edwards and Holt inside the home. Edwards and Woodson got into an argument, and Woodson told Edwards and Holt to leave. When Edwards and Holt exited the home and were standing on the front porch, defendant arrived in a car with his brother, Jacori Thomas. Woodson, who had followed Edwards and Holt to the front porch, began to tell defendant and Jacori what happened. An argument ensued on the front porch of the home, and Jacori pulled out a .38 caliber handgun. Jacori handed the gun to defendant, approached Edwards, and, according to Holt, "got in . . . [Edward's] face . . . like, you got to go, ya'll got to go." Jacori retrieved the gun from defendant and headed back to the car he had arrived in, which was blocking the car in which Edward and Holt had arrived.

Before Edwards and Holt got back into their car, they started yelling at defendant, who was standing on the walkway leading from the front porch to the driveway. Holt testified that he told defendant, "that's messed up you all waving that gun around." According to Holt, defendant then got "real amped up" and loud and stated, "you don't know what shit my brother own," and then "[defendant] just went crazy talking about nig***s think we hoe's." Immediately after this, Jacori got back out of the car and started firing the gun. Holt ran down the street and Edwards ran toward the backyard of the home. Defendant and Woodson chased Edwards into the backyard. Defendant grabbed Edwards by the hood of his sweatshirt and struck him in the face. Woodson and defendant started hitting Edwards and he fell down. While Edwards was on the ground, defendant kicked him a few times. Jacori followed the three men into the backyard and shot Edwards while he was lying on the ground. Defendant took money from Edwards's clothing and defendant, Woodson, and Jacori fled. Edwards was found after the incident lying in the same spot with a garbage can placed over his head. He had three gunshot wounds in his chest, one in his left arm, one in his left leg, and one in his right nostril.

Defendant was tried together with codefendant, Woodson, with separate juries under a theory of aiding and abetting Jacori in first-degree or second-degree murder, in addition to the other counts noted above.[1]

II. JURY INSTRUCTIONS

Defendant contends that the trial court erred when it failed to instruct the jury on voluntary and involuntary manslaughter. We disagree.

Defendant specifically requested and argued for an instruction on involuntary manslaughter. Therefore, this portion of his claim for instructional error is preserved. *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003). This Court reviews for an abuse of discretion the trial court's determination that a jury instruction is applicable to the facts of the case. *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). With regard to voluntary manslaughter, defendant did not request an instruction on the record. Therefore, this portion of his claim for instructional error is unpreserved and reviewed for plain error affecting defendant's substantial rights. *People v Gonzalez*, 468 Mich 636, 643; 664 NW2d 159 (2003).

The elements of voluntary and involuntary manslaughter are included in the elements of murder, and thus, both of these forms of manslaughter are necessarily included lesser offenses of murder. *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003). An instruction on a "necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002).

Defendant was prosecuted and convicted under a theory of aiding and abetting Jacori in second-degree murder. Second-degree murder is a death caused by an act of the defendant with malice and without justification. *People v Aldrich*, 246 Mich App 101, 123; 631 NW2d 67

[1] The jury found defendant not guilty of first-degree murder.

(2001). Malice is either "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause great bodily harm or death." *Id.* (quotation omitted). A person who aids or abets in the commission of an offense may be convicted and punished as if he directly committed the offense. MCL 767.39; *People v Mass*, 464 Mich 615, 627-628; 628 NW2d 540 (2001).

"Manslaughter is murder without malice." *Mendoza*, 468 Mich at 534. The offense of involuntary manslaughter is "the killing of another without malice and unintentionally, but in doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself, or by the negligent omission to perform a legal duty." *People v Datema*, 448 Mich 585, 595-596; 533 NW2d 272 (1995), quoting *People v Ryczek*, 224 Mich 106, 110; 194 NW 609 (1923). Here, a rational view of the evidence does not support a jury instruction on involuntary manslaughter. Absent from the record is any evidence to support a claim that Jacori did not intend to kill or cause great bodily harm to Edwards. Moreover, no evidence was presented that the death was caused by an unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some lawful act. *Id.* Defendant admitted to the police that he chased Edwards into the backyard, punched him, and knocked him to the ground. Then, Jacori ran to the backyard and shot Edwards while he was lying on the ground. This evidence clearly shows either an intent to kill or intent to cause great bodily harm on the part of Jacori, and because the prosecution charged defendant under a theory of aiding and abetting second-degree murder, an involuntary manslaughter instruction was not supported by a rational view of the evidence. Therefore, the trial court did not abuse its discretion when it refused to give an involuntary manslaughter instruction.

A rational view of the evidence also does not support a jury instruction on voluntary manslaughter. In order to prove voluntary manslaughter, "one must show that the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *Mendoza*, 468 Mich at 535. Notably, provocation is not an element of voluntary manslaughter, but rather, it is the circumstance that negates the presence of malice. *Id.* at 536; *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991). Again, defendant was prosecuted under a theory of aiding and abetting, and in order for an instruction on voluntary manslaughter to be proper, a rational view of the evidence must have supported a finding that Jacori killed Edwards in the heat of passion upon adequate provocation. *Mendoza*, 468 Mich at 535. No such evidence was presented. The verbal argument outside defendant's home was not sufficient to cause a reasonable person to lose control and shoot and kill another person. Moreover, Edwards was not armed with a weapon, nor did he physically engage with any person involved in the argument. Instead, defendant and Woodson beat Edwards to the ground and Jacori walked up and shot Edwards while he was lying on the ground. Because no evidence was presented to support a theory that Jacori shot and killed Edwards in the heat of passion upon adequate provocation, a rational view of the evidence does not support a jury instruction on voluntary manslaughter. Therefore, no error affecting defendant's substantial rights occurred.

III. SUFFICIENCY OF THE EVIDENCE

Defendant also contends that insufficient evidence was presented from which a rational trier of fact could find defendant guilty of aiding and abetting second-degree murder. We disagree.

This Court reviews a claim of insufficient evidence de novo, "viewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quotation omitted). Furthermore, "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

Second-degree murder consists of the following elements: "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *Aldrich*, 246 Mich App at 123 (quotation omitted). Malice is defined as "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* (quotation omitted). "The offense of second-degree murder does not require an actual intent to harm or kill, but only the intent to do an act that is in obvious disregard of life-endangering consequences." *People v Roper*, 286 Mich App 77, 84; 777 NW2d 483 (2009) (quotation omitted). A defendant may be held vicariously liable for murder on a theory of aiding and abetting. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). The elements of aiding and abetting are:

> (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement. [*People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (quotations omitted).]

A defendant is also liable for the crime the defendant intends to aid or abet as well as the natural and probable consequences of that crime. *Id.* at 14-15.

The prosecution presented sufficient evidence for a rational jury to conclude that Jacori committed second-degree murder, defendant assisted in the commission of the offense, and that defendant had knowledge that Jacori intended to commit the crime at the time defendant rendered assistance. It is undisputed that Jacori shot Edwards in the backyard of the home, and the medical examiner testified that Edwards died as a result of multiple gunshot wounds. After Jacori fired the first shot at Edwards in the front yard and Edwards fled toward the backyard of the home, defendant chased after Edwards. Defendant then grabbed Edwards by the hood, punched him in the face, and kicked him while he was on the ground. A jury could reasonably conclude that defendant assisted in the commission of the second-degree murder because defendant's actions precluded Edwards from escaping and enabled Jacori to come into the

backyard and shoot Edwards. Moreover, a jury could reasonably conclude that defendant had knowledge that Jacori intended to kill or cause great bodily harm at the time defendant chased Edwards down and knocked him to the ground. Indeed, defendant saw Jacori shoot at Edwards in the front yard. Therefore, there was sufficient evidence from which a rational trier of fact could find defendant guilty of second-degree murder under an aiding and abetting theory.

Affirmed.

/s/ Deborah A. Servitto
/s/ Karen M. Fort Hood
/s/ Jane M. Beckering